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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/892,839	06/27/2001	Jorge Ignacio Ciappi	GE-07063	3746

28581 7590 02/28/2003

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EXAMINER

JOHNSON, STEPHEN

ART UNIT PAPER NUMBER

3641

DATE MAILED: 02/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/892,839

Applicant(s)

CIAPPI, JORGE IGNACIO

Examiner

Steph n M. Johnson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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1. Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1-18, the preamble of the claim is inconsistent with the claim body. The preamble is directed to the subcombination “a missile launcher” or “an array of missile launchers” whereas the body of the claim is directed to the combination (a missile launcher in combination with a missile and missile canister) or (an array of missile launchers in combination with a missile and missile canister). This creates confusion as to the intended breadth of the claim language. Applicant is required to clarify whether the claims are intended to be drawn to the combination or subcombination and to amend the claims consistent with the intent.

In claims 4, 12, 16, and 18, use of the term “Mk 25” makes the claim indefinite as to what types of missiles and missile canisters are intended to be included or excluded by this terminology. In claim 13, line 6, how is the term “a deck” intended to relate to the previously claimed ‘deck’ (see claim 8, line 6)? In claim 14, line 6, use of the phrase “like missile launcher” makes the claim indefinite as to how closely related to a missile launcher the structure must be to infringe the claims.

2. Claims 4, 12, 16, and 18 contains the trademark/trade name “MK 25”. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the

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goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe a missile or missile canister and, accordingly, the identification/description is indefinite.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Weeks et al..

Weeks et al. disclose an array of missile launchers comprising:

- | | |
|---|-----------------------|
| a) a deck, | page 1, lines 106-108 |
| b) at least one exhaust gas chimney, | 14 |
| c) a support structure, | 1, 3, 4 |
| d) a missile exhaust plenum, | 13 |
| e) attachment means for attaching to said missile
canister, | see fig. 1 |
| f) a door structure, | 9, 10, 11 |
| g) attachment means coupled to each of the missile
launchers of the array, | 2 |
| h) a missile, and | 5 |
| i) a missile canister. | 6 |

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5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

6. Claims 1, 4-8, and 11-18 are rejected under 35 U.S.C. 102(a) as being anticipated by Larson et al..

Larson et al. disclose an array of missile launchers comprising:

- | | |
|---|------------|
| a) a deck, | see fig. 6 |
| b) at least one exhaust gas chimney, | 17 |
| c) a support structure, | 14 |
| d) a missile exhaust plenum, | 28 |
| e) attachment means for attaching to said missile
canister, | see fig. 4 |
| f) a door structure, | 60 |
| g) attachment means coupled to each of the missile
launchers of the array, | 54, 56 |
| h) a missile, and | 12 |
| i) a missile canister. | 18, 20 |

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Macnab et al., D'Ooge, Kamalian, and Wood et al. disclose other state of the art missile launcher assemblies.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Johnson whose telephone number is 703-306-4158.

The examiner can normally be reached on Tuesday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 703-306-4198. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3597 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-4177.



STEPHEN M. JOHNSON
PRIMARY EXAMINER

Stephen M. Johnson
Primary Examiner
Art Unit 3641

SMJ

February 24, 2003